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CITY OF INGLEWOOD
8
9

10 BEFORE THE
11 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
12

13 IN THE MATTER OF THE PETITION OF
THE CITY OF INGLEWOOD FOR REVIEW
14 OF ACTION AND FAILURE TO ACT BY
THE CALIFORNIA REGIONAL WATER
15 QUALITY CONTROL BOARD, LOS
ANGELES REGION, IN ISSUING ORDER
16 PURSUANT TO CALIFORNIA WATER
CODE SECTION 13383 AND NOTICE OF
17 VIOLATION
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**PETITION FOR REVIEW OF THE CITY
OF INGLEWOOD'S
(Water Code § 13320);
[PRELIMINARY MEMORANDUM OF
POINTS AND AUTHORITIES FILED
UNDER SEPARATE COVER]**

[REQUEST FOR FORMAL HEARING – 23 CCR § 2052(c)]

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The City further requests a formal hearing on this petition, pursuant to 23 C.C.R. § 2050(b), as well as 23 C.C.R. §§ 648, et seq, 23 C.C.R. § 648.7, and Chapter 5 of the California Administrative Procedure Act, set forth in Government Code §§ 11500, et seq. (“APA”).

1. The City is a charter law city, operating under the laws of the State of California and ordinances adopted by the City Council and is located in the County of Los Angeles, California.

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1 2. Respondent, the California Regional Water Quality Control Board, Los Angeles
2 Region ("Regional Board" or "RWQCB"), is and at all relevant times herein, was a regional
3 agency created pursuant to the provisions of the Water Code §§ 13200, et seq.

4 3. Respondent, Tracey Egoscue, is the Executive Officer of the Regional Board.

5 4. The State Water Resources Control Board ("State Board") is a state agency created
6 pursuant to the Water Code §§ 174 et seq. and 13200, et seq., and is charged with formulating and
7 adopting state policy for water quality control within the State of California.

8 5. The State Board has been designated as the state water pollution control agency for
9 the purposes stated in the Federal Water Pollution Control Act (the "Clean Water Act" - 33
10 U.S.C. § 1251 et seq.), and is the authorized agency to exercise certain powers delegated to it
11 under the Clean Water Act and any amendments thereto. (Water Code § 13160.) The State Board
12 is further empowered, pursuant to state and federal law, to adopt Water Quality Control Plans, as
13 required by the Clean Water Act, and such plans, when adopted, supersede any Regional Water
14 Quality Control Plans. (Water Code § 13170.) Under California law, in formulating and revising
15 state policy for water quality control, the State Board and the RWQCB are required to consult with
16 and carefully evaluate the recommendations of concerned federal, state and regional agencies on
17 water quality policy issues. (Water Code § 13144.)

18 6. Pursuant to California Water Code §§ 13320, et seq. and the regulations
19 promulgated thereunder, the State Board has jurisdiction over this Petition.

20 B. **BACKGROUND:**

21 7. The City, along with the County of Los Angeles and the Los Angeles County Flood
22 Control District (collectively, the "County"), and other incorporated cities within the County of
23 Los Angeles, are permittees (collectively, the "Permittees") under that Permit and 13383 Order
24 issued by Respondent, Regional Board on December 13, 2001, entitled "Waste Discharge
25 Requirements for Municipal Storm Water and Urban Runoff Discharges within the County of Los
26 Angeles, and the incorporated cities therein, except the City of Long Beach, Order No. 01-182,
27 NPDES No. CAS004001" (hereinafter, "MS4 Permit").
28

1 8. The Regional Board determined in the MS4 Permit that the City was in the
2 "Dominguez Channel/ Los Angeles Harbor Drainage" Watershed Management Area, and not
3 either the Santa Monica Bay or the Ballona Creek Watershed Management Areas (*See*,
4 Attachment A to MS4 Permit.)

5 9. Storm water and urban runoff originating in the City flows into a municipal
6 separate storm sewer system ("MS4") operated by the City and thereafter into the MS4 operated
7 by County. The County MS4 also carries storm water and urban runoff from MS4s operated by
8 other Permittees upstream and downstream from the City. Storm water and urban runoff from the
9 City's MS4 may flow from time to time into Centinela Creek, which also receives flows from
10 other Permittees and eventually drains into Ballona Creek.

11 10. The Ballona Creek Watershed is subject of the "Total Maximum Daily Loads for
12 Bacterial Indicator Densities in Ballona Creek, Ballona Estuary, and Sepulveda Channel"
13 ("Ballona Creek TMDL"), which became effective on April 27, 2007. The Ballona Creek TMDL
14 divides the Ballona Creek Watershed into Reach 1, Reach 2, Ballona Estuary and Sepulveda
15 Channel. The point at which Centinela Creek drains into Ballona Creek is located within the
16 Ballona Creek Estuary. The Ballona Creek TMDL requires that a no exceedances due to summer
17 dry weather flows be achieved in the estuary by *April 27, 2013*, six years from the effective date
18 of Ballona Creek TMDL. In addition, the Ballona Creek TMDL establishes a zero exceedance
19 waste load allocation for Centinela Creek during summer dry weather flows, with the same 2013
20 compliance target. The Ballona Creek TMDL has not yet been incorporated into the MS4 Permit.

21 11. On March 4, 2008, the Executive Officer of the Regional Board issued the NOV
22 and the 13383 Order to the City. The NOV and 13383 Order allege that the City violated the MS4
23 Permit because the Regional Board recorded exceedances of the *Santa Monica Bay Beaches*
24 *Bacteria Dry Weather TMDL* ("Santa Monica Bay Beaches TMDL") at the SMB BC-01
25 monitoring site on 119 days during the periods from September 14, 2006 through October 31,
26 2006 and April 1, 2007 through October 31, 2007.

27 12. To the City's knowledge, the Santa Monica Bay Beaches TMDL neither mentions
28 the City, nor assigns any waste load allocation to the City, or otherwise identifies the City as a

1 discharger or potential discharger of pollutants, and, in particular, bacteria, into the area which is
2 the subject of that TMDL. At no time, has the Regional Board provided any evidence indicating
3 that the City ever discharged any pollutants into any waters which caused or contributed to any
4 exceedances of the Santa Monica Bay Beaches TMDL.

5 13. The 13383 Order purports to require the City, by April 21, 2008, to provide
6 detailed information concerning the alleged exceedances, including (a) an evaluation of dry
7 weather discharges from the City's MS4 "at the noncompliant shoreline location on the date(s) of
8 the violations;" (b) a detailed description of remedial actions taken both before and after
9 incorporation of the Santa Monica Bay Beaches TMDL provisions into the MS4 Permit; (c) a
10 detailed description of "additional corrective and preventative actions" to be taken "to preclude
11 future violations" plus a time schedule "designed to achieve full compliance;" (d) an evaluation of
12 potential sources for the exceedances within the Ballona Creek watershed; and (e) evidence
13 supporting contentions made by the City that it is not responsible for the violations.

14 14. Each regional board with respect to its region is required, in addition to its other
15 duties to: "[r]equire as necessary any state or local agency to investigate and report on any
16 technical factors involved in water quality control or to obtain and submit analyses of water,
17 *provided that the burden, including costs, of such reports shall bear a reasonable relationship to*
18 *the need for the report and the benefits to be obtained therefrom.*" (Water Code § 13225(c), see
19 also, Water Code § 13165.)

20 15. The Executive Officer's actions in issuing the NOV and 13383 Order were
21 improper for the following reasons, among others:

- 22 (1) the 13383 Order and NOV improperly allege that City is responsible for
23 prohibited discharges to the Santa Monica Bay Watershed Area;
 - 24 (2) there are no findings or evidence that could support the conclusion that the
25 City caused or contributed to the bacteria exceedances;
 - 26 (3) the 13383 Order improperly shifts the burden of proof and production to the
27 City;
- 28

- 1 (4) the Regional Board improperly relied on unlawful water quality objectives
2 in the Water Quality Control Plan for the Los Angeles Region as the basis
3 for the alleged violations;
- 4 (5) the Regional Board improperly relied on Water Code Section 13383 in
5 issuing the 13383 Order;
- 6 (6) the 13383 Order improperly requires the City to provide information that
7 exceeds the scope of Water Code Section 13383;
- 8 (7) the 13383 Order improperly imposes a burden and costs in responding
9 reports which does not bear a reasonable relationship to the need for the
10 report and the benefits to be obtained therefrom in violation of Water Code
11 § 13225(c);
- 12 (8) the 13383 Order improperly modifies and amends the monitoring program
13 set forth in the MS4 Permit in violation of the Porter-Cologne Water
14 Quality Act ("Porter-Cologne Act");
- 15 (9) the Regional Board failed to consider that it is imposing unfunded mandates
16 in violation of the California Constitution;
- 17 (10) the Regional Board improperly calculated the geometric means in
18 determining whether a violation had occurred; and
- 19 (11) the Regional Board failed to consider whether the alleged violations were
20 caused by an upset.

21 C. **THE SPECIFIC ACTIONS AND FAILURES TO ACT BY THE REGIONAL**
22 **BOARD WHICH THE STATE BOARD IS REQUESTED TO REVIEW:**

23 16. The City requests that that State Board review the NOV and the 13383 Order in
24 their entirety, including but not limited to the entire "Requirement to Provide Information" section
25 of the 13383 Order and the following requirements:

- 26 (1) The requirement to provide a "report" for "the shoreline monitoring site, for
27 which it is jointly responsible, where violations have been documented."
28

1 (2) The requirement that the report provide:

2 1. For site SMB BC-01, which is impacted by
3 discharges from Ballona Creek watershed for which
4 there is a separate bacteria TMDL to address bacteria
5 impairments in Ballona Creek and its tributaries, an
6 evaluation and supporting documentation of whether
7 the sources causing the violations are originating
8 from upstream sources within the Ballona Creek
watershed, or whether the causes of the violations are
originating from sources in proximity to the shoreline
monitoring location. If the causes of the violations
are originating from proximity to the shoreline
monitoring location, then the City of Inglewood shall
provide the information required below.”

9 (3) The requirement that the report provide:

10 2. The source(s) of the violations for the shoreline
11 compliance location, including an evaluation of dry
12 weather discharges from the MS4 at the
13 noncompliant shoreline location on the date(s) of the
violations. The evaluation shall include, where
available:

14 a. Details regarding dry weather
15 discharge from the MS4 to the noncompliant
16 shoreline location including, but not limited to storm
drain position, volume estimate, flow direction,
presence of ponding, and proximity to surf.

17 b. Details regarding existing treatment of
18 summer dry weather discharge from the MS4 at the
19 noncompliant shoreline location, and any upstream
treatment including, but not limited to type(s) of
treatment system(s), operational capability(ies), and
operational status on date(s) of violation.

20 c. Results of any source investigation(s)
21 of the subwatershed, pursuant to protocols
22 established under CWC § 13178, detailing the
locational and/or biological origin of the bacteria
causing or contributing to RWL violations.

23 (4) The requirement that the report provide: “3. A detailed description of remedial
24 actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA
25 MS4 Permit (i.e., before September 14, 2006) and those remedial actions taken since, and the
26 results thereof.”

1 (5) The requirement that the report provide:

2 4. A detailed description of additional corrective and
3 preventative actions that will be taken for summer
4 dry weather discharges from the MS4 to preclude
5 future violations. The report shall include a time
6 schedule designed to achieve full compliance. This
7 timeline shall not be construed as an authorization for
8 any past or future RWL violations.

9 (6) The requirement that states:

10 In addition, should the City of Inglewood contend
11 that it is not responsible for one or more of the
12 violations, the City of Inglewood shall also submit
13 the following information, if applicable:

14 1. Evidence that the RWL violation(s) at the
15 shoreline or harbor monitoring site is not the result of
16 a discharge from the MS4 but from some other
17 source or discharges;

18 2. Evidence that Inglewood does not
19 discharge dry weather flow into the Santa Monica
20 Bay at the shoreline monitoring site; and

21 3. Evidence that Inglewood's summer dry
22 weather discharges into the Santa Monica Bay are
23 treated to a level that does not exceed either the
24 single sample or geometric mean bacteria RWLs.

25 17. The City further requests that the State Board review the "Violation of Receiving
26 Water Limitations" section of the NOV and the "Background" section of the 13383 Order,
27 including, but not limited to, the following statements:

28 (1) "Inglewood is in violation of the waste discharge requirements established in
Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042,
and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385."

(2) "The City of Inglewood is jointly responsible for violations at this monitoring
site along with other Permittees with land area within the watershed draining to this site."

D. **THE DATE ON WHICH THE REGIONAL BOARD ACTED:**

18. The Regional Board issued the NOV and 13383 Order on March 4, 2008.

1 E. **STATEMENT OF REASONS WHY THE ACTION WAS INAPPROPRIATE OR**
2 **IMPROPER:**

3 19. The actions taken by the Regional Board and its Executive Officer, among other
4 things, are inconsistent with provisions of the California Water Code, and, among other things,
5 place obligations on the City that are not mandated by, or violate, the Clean Water Act and/or the
6 Porter-Cologne Act; violate Article XIII(B) of the California Constitution, among other things, by
7 attempting to shift state obligations to the City and the Permittees without adequate funding;
8 violate the prohibitions found in Water Code § 13360(a); are not supported by evidence in the
9 record before the Regional Board; are not supported by findings or evidence in any record before
10 the Regional Board; and are arbitrary, capricious, an abuse of discretion and are not supported by
11 the weight of the evidence or by substantial evidence. A detailed discussion of these issues is
12 presented in the City's Preliminary Memorandum of Points and Authorities filed separately
13 herewith and incorporated herein by reference. The City further incorporates by reference the
14 arguments made by other Permittees in their separate contemporaneous petitions relating to the
15 notices of violation and orders to investigate issues to them on the basis of the same or similar
16 factual assertions.

17 1. **The 13383 Order Improperly Alleges that City is Responsible for**
18 **Exceedances of Santa Monica Bay Beaches TMDL**

19 (a) **City is Not Part of the Santa Monica Bay Watershed Management**
20 **Area**

21 20. The City is not responsible for compliance with the Santa Monica Bay Beaches
22 TMDL because, among other things, the MS4 Permit does not include the City as part of the Santa
23 Monica Bay Watershed Management Area, and there is no evidence, to the City's knowledge, that
24 storm water or urban runoff from the City caused or contributed to any of the exceedances
25 identified in the NOV.

26 21. Footnote 3 of Part 1.B of the MS4 Permit provides in part that "[a]ll Permittees
27 within a sub-watershed of the Santa Monica Bay Watershed Management Area are jointly
28 responsible for compliance with the limitations imposed in Tables 7-4.1 and 7-5.1 of the Basin

1 Plan.” (MS4 Permit, p. 22.) The MS4 Permit divides the County of Los Angeles into six
2 Watershed Management Areas. The permittees in each Watershed Management Area are listed in
3 Attachment A to the MS4 Permit. While some jurisdictions, like the City of Los Angeles, the
4 County of Los Angeles, and the Los Angeles County Flood Control District, are specifically listed
5 in more than one Watershed Management Area, the City is *not*. Attachment A clearly indicates
6 that the City is under the “Dominguez Channel/ Los Angeles Harbor Drainage” Watershed
7 Management Area only and not under the Santa Monica Bay Watershed Management Area or any
8 sub-watershed thereof. Accordingly, the City cannot be held responsible for discharges prohibited
9 under the Santa Monica Bay Beaches TMDL.

10 22. In addition, the City is not responsible for alleged exceedances of the Santa Monica
11 Bay Beaches TMDL because it does not fall within the category of jurisdictions or agencies
12 responsible for such exceedances. Footnote 3 of Part 1.B of the MS4 Permit provides that
13 responsibility for discharges that cause or contribute to exceedances of the Santa Monica Bay
14 Beaches TMDLs *“is determined as indicated in footnote 3 part (2) of Table 7-4.1 and footnote 2*
15 *part (1) of Table 7-5.1 of the Basin Plan.”* (MS4 Permit, p. 22.) Footnote 3 of Table 7-4-1
16 provides that for the purposes of the Santa Monica Bay Beaches TMDL, “responsible
17 jurisdictions and responsible agencies” includes:

18 (1) local agencies that are responsible for discharges from a publicly
19 owned treatment works to the Santa Monica Bay watershed or
directly to the Bay

20 (2) local agencies that are permittees or co-permittees on a
21 municipal stormwater permit

22 (3) local or state agencies that have jurisdictions over a beach
adjacent to Santa Monica Bay, and

23 (4) the California Department of Transportation pursuant to its
24 stormwater permit

25 23. None of the above categories include the City. Obviously, the first, third and fourth
26 categories do not apply. The Regional Board has not made any findings to explain why it asserts
27 the City is subject to the Santa Monica Bay Beaches TMDL. The second category could not be
28 reasonably interpreted to include all co-permittees under the MS4 Permit, because it would make

1 every city in Los Angeles County responsible for receiving water violations at the Santa Monica
2 Bay beaches, regardless of whether any discharges from that city actually caused or contributed to
3 any pollution of the watershed. Moreover, any such interpretation is not supportable because it
4 would conflict with the Regional Board's Watershed Management Approach.

5 (b) City is Only Potentially Subject to the Ballona Creek TMDL

6 24. A portion of the storm water and urban runoff from the City's MS4 may discharge
7 from time to time into Centinela Creek which flows into Ballona Creek. Discharges into Ballona
8 Creek are subject to the **Ballona Creek TMDL** for Ballona Creek, Sepulveda Channel, and
9 Ballona Estuary, which was adopted by the Regional Board on July 21, 2006 and became effective
10 on April 27, 2007. Unlike the Santa Monica Bay Beaches TMDL, which does not contain a single
11 reference to the City, the Ballona Creek TMDL clearly provides that the City, along with the
12 County of Los Angeles, Caltrans and the Cities of Los Angeles, Culver City, Beverly Hills, West
13 Hollywood and Santa Monica, is subject to the Ballona Creek TMDL. Consequently, the TDML
14 applicable to any discharges from the City to Centinela Creek is the specific Ballona Creek
15 TMDL, **not** the more general Santa Monica Bay Beaches TMDL.

16 25. To the extent that the City may be responsible for complying with the Ballona
17 Creek TMDL, the Regional Board may not take administrative action against the City for failure
18 to comply with the Ballona Creek TMDL because the Ballona Creek TMDL compliance deadline
19 is not until April 2013. Moreover, the Ballona Creek TMDL has not been incorporated into the
20 MS4 Permit. "A TMDL does, not, by itself, prohibit any conduct or require any actions. Instead,
21 each TMDL represents a goal that may be implemented by adjusting pollutant discharge
22 requirements in individual NPDES permits or establishing nonpoint source controls." (*City of*
23 *Arcadia v. State Water Resources Control Board* (2006) 135 Cal.App.4th 1392, 1414-1415
24 [quoting *City of Arcadia v. EPA* (N.D.Cal. 2003) 265 F.Supp.2d 1142, 1156].)

25 26. Therefore, the Regional Board could not take administrative action against the City
26 for any alleged failure to comply with the Ballona Creek TMDL until the MS4 Permit is reopened
27 to incorporate the Ballona Creek TMDL.
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1 27. Furthermore, even to the extent that the Santa Monica Bay Beaches TMDL might
2 arguably apply to the City, there is no evidence of which the City is aware, which in any way
3 demonstrates, that the source of any of the exceedances identified in the NOV was any discharge
4 which originated within the City.

5 28. Moreover, even to the extent that the Santa Monica Bay Beaches TMDL might
6 arguably apply to the City, the City could not be required to comply with the compliance deadline
7 for the Santa Monica Bay Beaches TMDL before it is required to comply with compliance
8 deadline for upstream monitoring locations for the Ballona Creek TMDL. The Ballona Creek
9 TMDL requires that no exceedances due to summer dry weather flows be achieved in the estuary
10 by April 27, 2013, six years from the effective date of Ballona Creek TMDL. It would not only be
11 illogical, but would defeat the purpose of establishing separate compliance points for different
12 locations within the Ballona Creek Watershed, if the Regional Board were to require the City to
13 comply with the compliance deadline for the Santa Monica Bay Beaches TMDL before the
14 compliance deadline for the Ballona Creek TMDL.

15 29. In fact, the Ballona Creek TMDL staff report specifically “recognized” that cities
16 discharging to Ballona Creek – particularly to tributaries like Centinela Creek -- would have
17 “challenges” meeting the shorter compliance deadlines of the Santa Monica Bay Beaches TMDL.
18 (Ballona Creek TMDL Staff Report, p. 39.) While the shorter deadlines may have been justified
19 for the Santa Monica Bay Beaches TMDL because planning and construction of diversion
20 facilities was already underway for storm drains at the beaches, that is “not the case for the
21 Ballona Creek Watershed.” (*Ibid.*) Ironically, the Regional Board found that forcing Ballona
22 Creek watershed cities to comply with the shorter deadlines (like the NOV and the 13383 Order
23 seek to do) could actually undermine implementation of the Preferred Strategy. (*Ibid.*)

24 (c) From the Face of the 13383 Order, it is Apparent that Most of the
25 Requirements are Not Applicable to Ballona Creek Discharges

26 30. The only reporting requirement in the 13383 Order that is arguably applicable to
27 the City is the requirement to provide information for site “SMB BC-01” because that is the only
28 requirement potentially applicable to discharges from Ballona Creek. It is clear from the language

1 of the 13383 Order that the rest of the reporting requirements apply only to those jurisdictions and
2 agencies that discharge to the shoreline monitoring locations. For example, the second
3 requirement in the 13383 Order purports to require the City to provide "[t]he source(s) of the
4 violations for the *shoreline compliance location*, including an evaluation of dry weather
5 discharges from the MS4 at the *noncompliant shoreline location* on the date(s) of the violations."
6 (Emphasis added.) The Regional Board erroneously included reporting requirements for shoreline
7 monitoring locations in the City's 13383 Order even though the City does not discharge to such
8 locations. This error is a result of the fact that the Regional Board issued virtually the same orders
9 to 22 different Permittees without adequate investigation or consideration of the locations and
10 discharges of each jurisdiction.

11 31. The Regional Board's inadequate investigation and overreaching is further
12 evidenced by references in the NOV and 13383 Order to the Marina del Rey Harbor Mothers'
13 Beach and Back Basins Bacteria TMDL, a TMDL to which the City is not subject.

14 32. The Regional Board's failure to tailor the requirements in the 13383 Order to the
15 City's location and discharges was clearly improper, arbitrary and capricious and unsupported by
16 evidence.

17 2. **The NOV and the 13383 Order Fail to Provide Findings or Evidence to**
18 **Support the Allegation that the City Caused or Contributed to the**
19 **Bacteria Exceedance**

20 33. The Regional Board has not satisfied its burden of proving that the City's
21 discharges caused or contributed to bacteria exceedances at the "SMB-BC-1" monitoring site.
22 Alleged violations must be based on some quantum of evidence. (*In the Matter of the Petition of*
23 *the County of San Diego, San Marcos Landfill*, Order WQO 2002-0020, 2002 WL 31694367;
24 Evidence Code § 500.) The Regional Board cannot merely make broad assumptions based on a
25 few inconclusive facts. (*Ibid.*) Accordingly, the Regional Board must make findings and provide
26 evidence that support its contention that the City "caused or contributed" to exceedances of the
27 Santa Monica Bay Beaches TMDL.
28

1 34. There are no explicit findings in either the NOV or the Order and the evidence
2 implicitly relied upon by the Regional Board for its assertion that the City violated the MS4 is
3 entirely speculative, at best. The only relevant fact cited by the Regional Board in the NOV and
4 the Order is that exceedances of the Santa Monica Bay Beaches TMDL were recorded at the
5 SMB-BC-1 monitoring site on 119 of the 260 days (or 46%) during the periods from September
6 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007. This fact,
7 without more, is insufficient to prove that the City violated the MS4 Permit, especially given the
8 fact that there are a number of potential sources of bacteria, including but not limited to, sanitary
9 sewer and sewage plant overflows and spills, illicit discharges from private drains, naturally-
10 occurring bacteria from a source within the wave wash, and urban runoff from separately-
11 permitted facilities, state facilities, or federal facilities.

12 3. **The Regional Board's 13383 Order Improperly Shifts the Burden of**
13 **Proof to the City**

14 35. The 13383 Order improperly places the burden on the City to prove that it is not
15 responsible for the violation of the MS4 Permit. The 13383 Order provides in relevant part,

16 “[s]hould the City of Inglewood contend that it is not responsible for
17 one or more of the violations, Inglewood shall also submit the
following information, if applicable:

- 18 1. Evidence that the RWL violation(s) at the shoreline monitoring
19 site is not the result of discharge from the MS4 but from some other
sources or discharges;
- 20 2. Evidence that Inglewood does not discharge dry weather flow into
21 the Santa Monica Bay at the shoreline monitoring site; and
- 22 3. Evidence that Inglewood's summer dry weather discharges into
23 Santa Monica Bay are treated to a level that does not exceed either
the single sample or geometric mean bacteria RWLs.”

24 36. The Regional Board cannot require the City to disprove the Regional Board's
25 unsupported allegation that the City caused or contributed to the violation because the Regional
26 Board has the burden of proving each fact that is essential to the NOV and the 13383 Order and
27 the burden of producing evidence in support of said facts. (*See Sargent Fletcher, Inc. v. Able*
28 *Corp.* (2003) 110 Cal. App. 4th 1658, 1667-1668; Evidence Code §§ 115, 500, 520.) The

1 Regional Board can only shift the burden of production to the City, if at all, once the Regional
2 Board has produced sufficient evidence to prove that the City caused or contributed to the
3 violation. (*Sargent Fletcher, Inc., supra*, 110 Cal. App. 4th 1667-1668.) The Regional Board,
4 however, has not met this initial burden. It has not produced any evidence that the bacteria
5 exceedances came from Centinela Creek, let alone the MS4 or, in particular, the City's MS4.

6 37. Moreover, the Regional Board cannot seek to hold all of the Permittees under the
7 MS4 Permit jointly and severally liable for the exceedances of the Santa Monica Bay Beaches
8 TMDL without making a sufficient showing that *each* of the Permittees in fact caused or
9 contributed to the exceedances. The 13383 Order and NOV assert that the City is "jointly
10 responsible" for violations at the SMB-BC-1 monitoring site along with other permittees with land
11 area within the watershed draining to the monitoring site. The "jointly responsible" language in
12 the 13383 Order implies that the Regional Board is holding the City jointly and severally liable for
13 violations at the SMB-BC-1 monitoring site. However, in order to do so, the Regional Board must
14 first establish that the City caused or contributed to the violation. Liability of each party must still
15 be proven individually for each party.

16 38. The Regional Board has failed to make any findings or provide any evidence that
17 demonstrate in any way that the City's discharges caused or contributed to any exceedance at the
18 shoreline monitoring location. There is no authority under the Porter-Cologne Act, the Clean
19 Water Act or common law that authorizes the Regional Board to hold the City liable for an alleged
20 violation without any such proof.

21 4. **The Regional Board Improperly Relied on Unlawful Water Quality**
22 **Objectives in the Water Quality Control Plan for the Los Angeles**
23 **Region as the Basis for the Alleged Violations**

24 39. The 13383 Order is invalid because the Regional Board improperly relied on water
25 quality objectives and TMDLs in the Water Quality Control Plan for the Los Angeles Region
26 ("Basin Plan") that were not adopted or reviewed in accordance with the law.
27
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1 5. **The Regional Board Improperly Relied on Water Code § 13383 in**
2 **Issuing the 13383 Order**

3 (a) The Regional Board Failed to Follow the Procedures Set Forth in the
4 MS4 Permit for Addressing Bacteria Exceedances

5 40. The Regional Board improperly issued the NOV and 13383 Order before
6 complying with the procedures described in the MS4 Permit for addressing bacteria exceedances.
7 Finding E.37 of the MS4 Permit provides that if receiving water limitations are exceeded at a
8 compliance monitoring site, the Regional Board will first issue an investigative order “pursuant to
9 Cal. Water Code § 13267 or § 13225” to the responsible agencies or jurisdictions *to determine the*
10 *source of the exceedance*. The finding further provides that only after the Regional Board has
11 determined that one or more permittees have caused or contributed to violations of receiving water
12 limitations would “the Regional Board . . . consider appropriate enforcement action, including a
13 cease and desist order with or without a time schedule for compliance, or other appropriate
14 enforcement action depending upon the circumstances and the extent to which the Permittee(s) has
15 endeavored to comply with these provisions.” (MS4 Permit, Finding E.37.) The Regional Board,
16 however, completely disregarded the process set forth in Finding 37 in issuing the NOV and
17 13383 Order. This action was unjustified because the Regional Board did not first determine that
18 the City in fact caused or contributed to the exceedances of the Santa Monica Bay Beaches
19 TMDL.

20 (b) Section 13383 does not provide the Regional Board with Adequate
21 Authority to Issue the 13383 Order

22 41. The Regional Board's 13383 Order is improper because the requirements set forth
23 therein go well beyond the scope of monitoring requirements permitted under Water Code section
24 13383. Section 13383 authorizes the Regional Board to establish "monitoring, inspection, entry,
25 reporting, and recordkeeping requirements...for any person...who discharges to navigable
26 waters." The purpose of this section is to provide regional boards with the authority to obtain
27 “monitoring, inspection or entry” information regarding a permittee’s discharges so that the
28

1 regional boards can adequately characterize a permittee's discharge. Section 13383 does not to
2 provide regional boards with broad investigative authority.

3 42. The information requested by the Regional Board requires the City to determine
4 whether other sources of bacteria or discharges from other agencies or jurisdictions caused the
5 alleged exceedances. For example, the 13383 Order requests the City to produce:

6 [A]n evaluation and supporting documentation of whether the
7 sources causing the violations are originating from upstream sources
8 within the Ballona Creek watershed, or whether the causes of the
9 violations are originating from sources in proximity to the shoreline
10 monitoring location. If the causes of the violations at these sites are
11 originating from sources in proximity to the shoreline monitoring
12 location, then the City of Inglewood shall provide the information
13 required below.

14 The 13383 Order also states:

15 [S]hould the City of Inglewood contend that it is not
16 responsible for one or more of the violations, Inglewood shall also
17 submit the following information, if applicable:

18 1. Evidence that the RWL violation(s) at the shoreline
19 monitoring site is not the result of discharge from the MS4 but from
20 some other sources or discharges;

21 2. Evidence that Inglewood does not discharge dry weather
22 flow into the Santa Monica Bay at the shoreline monitoring site;
23 and

24 3. Evidence that Inglewood's summer dry weather discharges
25 into the Santa Monica Bay are treated to a level that does not
26 exceed either the single sample or geometric mean bacteria RWLs.

27 These requests go far beyond monitoring the City's discharges from the MS4 and therefore exceed
28 the Executive Officer's authority under Section 13383.

29 **6. The Regional Board's 13383 Order Improperly Requires the City to**
30 **Provide Information that Exceeds the Scope of Water Code § 13383**

31 43. The 13383 Order is invalid because it requires the City to provide information that
32 is not reasonably required and the burden and costs of complying with the order does not bear a
33 reasonable relationship to the need for the report and the benefits to be obtained therefrom in
34 violation of Water Code § 13225(c) and Water Code § 13383. Water Code § 13383 provides
35 regional boards with the authority to require a discharger "to establish and maintain monitoring

1 equipment or methods, including, where appropriate, biological monitoring methods, sample
2 effluent as prescribed, and provide other information as may be reasonably required." As
3 discussed above, the purpose of this provision is to permit the Regional Board to adequately
4 characterize discharges by permittees. The information requested by the Regional Board in the
5 13383 Order, however, does not relate solely to the City's discharges. Rather, it requires the City
6 to analyze discharges and make assumptions regarding factors well outside the City's jurisdiction.
7 For example, the 13383 Order requires the City to examine the shoreline monitoring site, which is
8 located miles from the City's boundaries, and to conduct an analysis of all upstream sources. The
9 information requested in the 13383 Order is beyond the scope of information that may be
10 requested under Sections 13383 and 13225(c).

11 7. **The Regional Board's 13383 Order Improperly Modifies and Amends**
12 **the Monitoring Program Set Forth in the MS4 Permit in Violation of**
13 **the Porter-Cologne Water Quality Act**

14 44. The Regional Board's 13383 Order is invalid because it modifies and amends the
15 reporting requirements in the MS4 Permit without complying with the modification procedures set
16 forth in the Porter-Cologne Water Quality Act ("Porter-Cologne"). The MS4 Permit is both a
17 NPDES permit and waste discharge requirement ("WDR") issued by the Regional Board under the
18 Act and contains a detailed monitoring program the City must comply with. See Water Code §§
19 13370-13389. Porter-Cologne explicitly provides that a WDR cannot be issued except through
20 prior notice and hearing before the Regional Board and that the Regional Board cannot delegate its
21 authority to modify a WDR to an executive officer. (Water Code § 13223(a) ("Each regional
22 board may delegate any of its powers and duties vested in it by [the Porter-Cologne Act] excepting
23 only the following: . . . (2) the issuance, modification, or revocation of any water quality control
24 plan, water quality objectives, or waste discharge requirement.")) The 13383 Order issued by the
25 Executive Officer, however, requires the City to submit detailed reports not required in the
26 monitoring program under the MS4 Permit, effectively modifying and amending the monitoring
27 program set forth in the MS4 Permit without notice or hearing in violation of Porter-Cologne.
28

1 8. **Regional Board Failed to Consider Whether the Requirements in the**
2 **13383 Order Constitute Unfunded Mandates**

3 45. The Regional Board's 13383 Order and NOV impose unfunded mandates in
4 violation of Article XIII B, Section 6 of the California Constitution. Article XIII B, Section 6 of
5 the Constitution prohibits the state from shifting the cost of government from itself to local
6 agencies without providing a "subvention of funds to reimburse that local government for the
7 costs of the program or increased level of service . . ." While the decision as to whether a
8 requirement is an unfunded mandate must first be decided by the Commission on State Mandates,
9 the Regional Board must also consider whether the requirements in the 13383 Order impose
10 unfunded mandates to determine whether its 13383 Order is consistent with the maximum extent
11 practicable standard under Clean Water Act Section 402(p) and the requirement to evaluate
12 economic factors under Water Code Sections 13125, 13241, 13263 and 13267. The Regional
13 Board, however, failed to do so.

14 9. **Regional Board Improperly Calculated the Geometric Mean for the**
15 **Alleged Violations**

16 46. The Regional Board used a method to calculate the geometric mean that is
17 inconsistent with the Regional Board's approved method for the Santa Monica Bay Beaches
18 TMDL. Accordingly, the Regional Board incorrectly determined whether there were exceedances
19 of the Santa Monica Bay Beaches TMDL at the monitoring site.

20 10. **Regional Board Failed to Consider Whether the Alleged Violations**
21 **Were Caused by an Upset**

22 47. The Regional Board acted improperly by failing to consider whether the alleged
23 violations described in the 13383 Order were caused by an upset. Part 6.N. of the MS4 Permit
24 defines an upset as "an exceptional incident in which there is unintentional and temporary
25 noncompliance with technology based permit effluent limitations because of factors beyond the
26 reasonable control of the permittee." Because the Regional Board cannot hold the City liable for
27 an alleged violation of the MS4 permit if the violation was caused by an upset and there are
28 numerous other sources of bacteria that could have caused the alleged violations, the Regional

1 Board should have first considered whether the alleged violations were caused by an upset before
2 issuing the NOV and 13383 Order. The City hereby expressly reserves its right to assert an upset
3 defense to any or all of the alleged violations.

4 48. The City hereby expressly reserves its right to amend this petition to add additional
5 grounds and allegations as additional facts and evidence are discovered.

6 F. **MANNER IN WHICH PETITIONER IS AGGRIEVED:**

7 49. The City is aggrieved by the 13383 Order because the 13383 Order requires the
8 City to prepare and submit detailed technical reports within an unreasonably short period of time.
9 The City will incur substantial costs in preparing such technical reports and will be required to
10 divert limited City personnel and funds from other important projects and those costs and the
11 burden of preparing such reports does not bear a reasonable relationship to the need for the report
12 and the benefits to be obtained therefrom.

13 50. In addition, the failure to comply with the 13383 Order potentially subjects the
14 City to administrative civil liability or judicially imposed civil liability of up to \$10,000 per day or
15 \$25,000 per day, respectively.

16 51. The Regional Board's 13383 Order and NOV are also not supported by findings or
17 evidence, the Regional Board's actions are an abuse of discretion, and the Regional Board's actions
18 are improper, inappropriate, arbitrary and capricious and contrary to state and federal law. The
19 City is aggrieved by the unjustified NOV both because it is the sole justification for the issuance
20 of the 13383 Order, and also because this unsupported NOV could possibly be a factor considered
21 to the City's detriment in any future enforcement proceeding. (See Water Code § 13385(e).)

22 G. **THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH**
23 **PETITIONER REQUESTS:**

24 52. The City requests that the State Board:

25 (1) Issue an order vacating the directives set forth by the Regional Board in the
26 13383 Order;

27 (2) Rescind the NOV;
28

1 (3) Order the Regional Board to conduct an evidentiary hearing on the 13383 Order
2 and NOV if the Regional Board still wishes to proceed with the matters set forth therein;

3 (4) Conduct a formal hearing to consider testimony, other evidence, and argument
4 pursuant to Sections 648, et seq. and 2050.6(b) of Title 23 of the California Code of Regulations
5 and the APA;

6 (5) Issue an Order providing for such other and further relief as is just and
7 proper and as may be requested by the City and other Petitioners; and

8 (4) That costs, attorney fees and other expert fees incurred in pursuing this
9 Petition be awarded to the City.

10 H. **A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
11 **ISSUES RAISED IN THE PETITION:**

12 53. The City has filed a separate preliminary memorandum of points and authorities in
13 support of this Petition under separate cover. The City reserves the right to supplement its
14 preliminary memorandum of points and authorities upon receipt and review of the administrative
15 record.¹

16 I. **A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE REGIONAL**
17 **BOARD:**

18 54. A copy of this Petition will be simultaneously served on the Respondent, the
19 Regional Board, through its Executive Officer at the following address:

20 Tracy Egoscue, Executive Officer
21 California Regional Water Quality Control Board, Los Angeles Region
22 320 W. 4th Street, Suite 200
Los Angeles, CA 90013

23 55. The City has requested by letter dated April 3, 2008 that the Regional Board
24 prepare the Administrative Record and a list of interested persons.

25 _____
26 ¹ The State Water Resources Control Board's regulations require submission of a statement of points and authorities
27 in support of a petition (23 C.C.R. §2050(a)(7)), and the City's preliminary memorandum is intended to satisfy this
28 requirement. However, it is impossible to prepare a complete statement and memorandum in the absence of the
complete administrative record, which is not yet available.

1 J. A STATEMENT THAT THE ISSUES RAISED IN THE PETITION WERE
2 PRESENTED TO THE REGIONAL BOARD BEFORE THE REGIONAL BOARD
3 ACTED OR FAILED TO ACT, OR EXPLANATION OF WHY THE PETITIONER
4 COULD NOT RAISE THOSE OBJECTIONS BEFORE THE REGIONAL BOARD:

5 56. The City was unable to raise the substantive issues or objections raised in this
6 Petition before the Regional Board because the 13383 Order was issued by the Executive Officer
7 without prior notice or hearing. The City's consultant and public works director were not able to
8 meet with the Executive Officer to discuss the issues raised in this Petition.

9 K. REQUEST TO HOLD PETITION IN ABEYANCE:

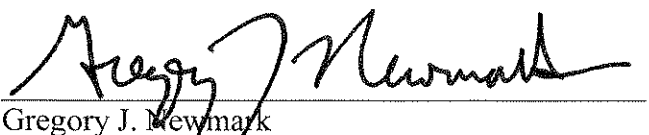
10 57. Pursuant to California Code of Regulations, Title 23 Section 2050.5(d), the City
11 requests that the State Board initially hold this Petition in abeyance to allow time for the City to
12 attempt to resolve the issues raised in this Petition with the Regional Board informally. The City
13 will promptly notify the State Board when the City seeks to have its Petition considered.

14 DATED: April 3, 2008

Respectfully submitted,

15 MEYERS, NAVE, RIBACK, SILVER & WILSON
16 JOHN J. HARRIS
17 GREGORY J. NEWMARK
18 SABRINA WOLFSON

19 By:



20 Gregory J. Newmark
21 Attorneys for Petitioner,
22 CITY OF INGLEWOOD

23 1076717.6
24
25
26
27
28

EXHIBIT A



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 Environmental Leadership Award from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

March 4, 2008

Mr. Glen Kau
Director of Public Works
City of Inglewood
P.O. Box 6500
Inglewood, CA 90301-1750

VIA CERTIFIED MAIL

NOTICE OF VIOLATION (ORDER NO. 01-182 AS AMENDED BY ORDER NO. R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, WDIID 4B190179001)

Dear Mr. Kau:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination System (NPDES) as authorized by the federal Clean Water Act. On December 13, 2001, this Regional Board adopted the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (LA MS4 Permit), under which the City of Inglewood is a Permittee.

BACKGROUND

The LA MS4 Permit includes Discharge Prohibitions, Receiving Water Limitations, and a Monitoring and Reporting Program, among other requirements. Under Part 1, Discharge Prohibitions, the LA MS4 Permit requires that the Permittees "effectively prohibit non-storm water discharges into the MS4 [municipal separate storm sewer system] and watercourses," except under limited circumstances, as specified in Part 1. Under Part 2, Receiving Water Limitations, the LA MS4 Permit prohibits "discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives."

The LA MS4 Permit was subsequently amended on September 14, 2006 by Order No. R4-2006-0074 and on August 9, 2007 by Order No. R4-2007-0042 to implement the summer dry weather waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. The summer dry weather requirements were incorporated in the LA MS4 Permit as specific Receiving Water Limitations (RWLs) for fecal indicator bacteria in Parts 2.5 and 2.6, and a supporting specific prohibition on discharges from the MS4 that cause or contribute to exceedances of the bacteria RWLs.

California Environmental Protection Agency



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The Permittees collectively discharge urban runoff and storm water from the MS4 to the Santa Monica Bay, a navigable water of the United States, under the provisions and requirements of the LA MS4 Permit. These discharges, as demonstrated via shoreline water quality monitoring, contain total coliform, fecal coliform, enterococcus and other pollutants, which degrade water quality and impact beneficial uses of the receiving waters at beaches along Santa Monica Bay. These bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

VIOLATIONS OF RECEIVING WATER LIMITATIONS

The City of Inglewood is hereby notified that technical staff has concluded that Inglewood is in violation of waste discharge requirements established in Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385.

The data submitted in the Permittees' shoreline monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Part 2.5 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at one shoreline monitoring site located along Santa Monica Bay beaches to which the City of Inglewood discharges via the MS4, on 119 days, which included 209 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are summarized in Table 1, detailed in the attachment, and incorporated herein by reference. The City of Inglewood is jointly responsible for violations at this monitoring site along with the other Permittees with land area within the watershed draining to this site.

CIVIL LIABILITY

Pursuant to CWC § 13385, the City of Inglewood is subject to penalties of up to \$10,000 for each day in which a violation of RWLs occurs. These civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred, and without further warning. The Regional Board may also request that the State Attorney General seek judicially imposed civil liabilities of up to \$25,000 for each day in which a violation occurs, or injunctive relief, pursuant to CWC §§ 13385 and 13386. The City of Inglewood may also be subject to penalties pursuant to other sections, and other forms of enforcement proceedings, in addition to those described above.

To ensure that the causes of the violations are identified and abated, enclosed herewith, please find an Order directing the City of Inglewood to submit a variety of reports pursuant to CWC § 13383. Specifically, these reports shall provide an evaluation and documentation of the causes of these violations, remedial actions to date, and the City's plans for additional corrective and preventative actions to bring discharges from the MS4 into prompt compliance with the bacteria RWLs applicable to the Santa Monica Bay.

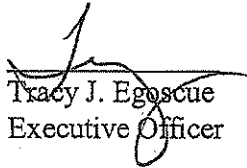
California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

If you have any questions regarding this matter, please contact me at (213) 576-6605, or alternatively, your staff may contact Mr. Carlos Urrunaga at (213) 620-2083.

Sincerely,


Tracy J. Egoscue
Executive Officer

Enclosures: Table 1
Attachment 40
Order Pursuant to California Water Code Section 13383, dated March 4, 2008

cc: Ms. Erika Bustamonte, Administrative Assistant, Inglewood
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugene Bromley, U.S. EPA, Region 9

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

TABLE 1

INGLEWOOD
SUMMARY OF VIOLATIONS OF BACTERIA
RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042

| Site ID | Single Sample RWL Violations | | | | 30-day Geometric Mean RWL Violations | | | Total RWL Violations by Site | Total Days of Violations by Site |
|-----------|------------------------------|----------------|--------------|---|--------------------------------------|----------------|--------------|------------------------------|----------------------------------|
| | Total Coliform | Fecal Coliform | Enterococcus | Total Coliform (Fecal:Total Coliform Ratio > 0.1) | Total Coliform | Fecal Coliform | Enterococcus | | |
| SMB BC-01 | 30 | 15 | 7 | 8 | 113 | 36 | 0 | 209 | 119 |

ATTACHMENT

**VIOLATIONS OF BACTERIA RECEIVING WATER LIMITATIONS BY
SHORELINE MONITORING SITE**

VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB-BC-01, BALLONA CREEK

| Date of Violation(s) | Single Sample Result (MPN/100 ml) | | | | 30-day Geometric Mean Result* (MPN/100 ml) | | |
|-------------------------|-----------------------------------|----------------|--------------|---|--|----------------|--------------|
| | Total Coliform | Fecal Coliform | Enterococcus | Total Coliform (Fecal:Total Coliform Ratio > 0.1) | Total Coliform | Fecal Coliform | Enterococcus |
| Basin Plan Limit | 10000 | 400 | 104 | 1000 | 1000 | 200 | 35 |
| 9/14/2006 | | | | | 1452 | | |
| 9/15/2006 | | | | | 1225 | | |
| 9/16/2006 | | | | | 1176 | | |
| 9/17/2006 | | | | | 1186 | | |
| 9/18/2006 | | | | | 1180 | | |
| 9/19/2006 | | | | | 1137 | | |
| 9/20/2006 | | | | | 1020 | | |
| 4/24/2007 | >13000 | 4400 | 190 | >13000 | | | |
| 6/15/2007 | | | | 1900 | | | |
| 6/22/2007 | 11000 | | | | | | |
| 6/28/2007 | 11000 | | | | | | |
| 6/30/2007 | | | 140 | | 1092 | | |
| 7/1/2007 | | | | | 1096 | | |
| 7/2/2007 | | | | | 1191 | | |
| 7/3/2007 | | | | | 1315 | | |
| 7/4/2007 | | | | | 1259 | | |
| 7/5/2007 | | | | | 1423 | | |
| 7/6/2007 | | | | | 1516 | | |
| 7/7/2007 | | | | | 1587 | | |
| 7/8/2007 | | | | | 1512 | | |
| 7/9/2007 | | | | | 1536 | | |
| 7/10/2007 | | | | | 1505 | | |
| 7/11/2007 | | | | | 1307 | | |
| 7/12/2007 | | | | | 1513 | | |
| 7/13/2007 | 13000 | | | | 1755 | | |
| 7/14/2007 | | | | | 1817 | | |
| 7/15/2007 | | | | | 1813 | | |
| 7/16/2007 | | | | | 1814 | | |
| 7/17/2007 | >13000 | | | | 1992 | | |
| 7/18/2007 | >13000 | | | | 2170 | | |
| 7/19/2007 | >13000 | | | | 2675 | | |
| 7/20/2007 | | | | | 2161 | | |
| 7/21/2007 | >13000 | | | | 2746 | | |
| 7/22/2007 | | | | | 2570 | | |
| 7/23/2007 | | | | | 2531 | | |
| 7/24/2007 | | | | | 2599 | | |
| 7/25/2007 | | | | | 2427 | | |
| 7/26/2007 | 13000 | | | | 2612 | | |
| 7/27/2007 | >13000 | | | | 2910 | | |
| 7/28/2007 | | | | | 2650 | | |
| 7/29/2007 | | | | | 2602 | | |
| 7/30/2007 | | | | | 2563 | | |
| 7/31/2007 | | | | | 2482 | | |
| 8/1/2007 | 13000 | | | | 2676 | | |

VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB-BC-01, BALLONA CREEK

| Date of Violation(s) | Single Sample Result (MPN/100 ml) | | | | 30-day Geometric Mean Result* (MPN/100 ml) | | |
|-------------------------|-----------------------------------|----------------|--------------|---|--|----------------|--------------|
| | Total Coliform | Fecal Coliform | Enterococcus | Total Coliform (Fecal:Total Coliform Ratio > 0.1) | Total Coliform | Fecal Coliform | Enterococcus |
| Basin Plan Limit | 10000 | 400 | 104 | 1000 | 1000 | 200 | 35 |
| 8/2/2007 | >13000 | | | | 2713 | | |
| 8/3/2007 | >13000 | 500 | | | 3146 | | |
| 8/4/2007 | >13000 | | | | 3535 | | |
| 8/5/2007 | | | | | 3427 | | |
| 8/6/2007 | | | | | 3255 | | |
| 8/7/2007 | 13000 | | | | 3477 | | |
| 8/8/2007 | 13000 | | | | 3691 | | |
| 8/9/2007 | | | | | 4001 | | |
| 8/10/2007 | >13000 | | | | 5084 | | |
| 8/11/2007 | | | | | 5039 | | |
| 8/12/2007 | | | | | 4817 | | |
| 8/13/2007 | | | | | 5553 | | |
| 8/14/2007 | 11000 | 1300 | | 11000 | 5737 | | |
| 8/15/2007 | >13000 | 6800 | | >13000 | 5955 | | |
| 8/16/2007 | >13000 | 11000 | | >13000 | 5955 | | |
| 8/17/2007 | 11000 | 5500 | | 11000 | 5909 | 235 | |
| 8/18/2007 | >13000 | 13000 | | >13000 | 5909 | 299 | |
| 8/19/2007 | | | | | 7315 | 321 | |
| 8/20/2007 | | | | | 7107 | 336 | |
| 8/21/2007 | | | | | 6983 | 337 | |
| 8/22/2007 | | | 590 | | 6837 | 329 | |
| 8/23/2007 | >13000 | 1100 | | | 7183 | 374 | |
| 8/24/2007 | 13000 | | | | 8273 | 403 | |
| 8/25/2007 | | | | | 7647 | 391 | |
| 8/26/2007 | | | | | 7456 | 426 | |
| 8/27/2007 | | | | | 8106 | 467 | |
| 8/28/2007 | | | | | 7618 | 426 | |
| 8/29/2007 | | | | | 6888 | 391 | |
| 8/30/2007 | | | | | 7316 | 403 | |
| 8/31/2007 | >13000 | 1300 | | | 7316 | 461 | |
| 9/1/2007 | | 830 | | | 7216 | 502 | |
| 9/2/2007 | | | | | 7017 | 502 | |
| 9/3/2007 | | | | | 6803 | 524 | |
| 9/4/2007 | | 500 | | | 6852 | 523 | |
| 9/5/2007 | | | | | 6958 | 491 | |
| 9/6/2007 | 13000 | 500 | | | 6958 | 499 | |
| 9/7/2007 | | | | | 6041 | 468 | |
| 9/8/2007 | | | | | 5723 | 454 | |
| 9/9/2007 | | | | | 5504 | 460 | |
| 9/10/2007 | | | | | 5894 | 506 | |
| 9/11/2007 | | | | | 5679 | 460 | |
| 9/12/2007 | >13000 | 430 | | | 5897 | 458 | |
| 9/13/2007 | >13000 | 1800 | | >13000 | 5942 | 465 | |
| 9/14/2007 | >13000 | 830 | | | 5942 | 423 | |

**VIOLATIONS OF RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER PERIODS
SEPTEMBER 14, 2006 - OCTOBER 31, 2006 AND APRIL 1, 2007 - OCTOBER 31, 2007
ORDER 01-182 AS AMENDED BY R4-2006-0074 AND R4-2007-0042
SITE ID SMB-BC-01, BALLONA CREEK**

| Date of Violation(s) | Single Sample Result (MPN/100 ml) | | | | 30-day Geometric Mean Result* (MPN/100 ml) | | |
|-------------------------|-----------------------------------|----------------|--------------|---|--|----------------|--------------|
| | Total Coliform | Fecal Coliform | Enterococcus | Total Coliform (Fecal:Total Coliform Ratio > 0.1) | Total Coliform | Fecal Coliform | Enterococcus |
| Basin Plan Limit | 10000 | 400 | 104 | 1000 | 1000 | 200 | 35 |
| 9/15/2007 | | | | | 5598 | 335 | |
| 9/16/2007 | | | | | 5421 | 293 | |
| 9/17/2007 | | | | | 5189 | 243 | |
| 9/18/2007 | | | | | 5220 | 241 | |
| 9/19/2007 | | | | | 4822 | 227 | |
| 9/20/2007 | | | | | 3967 | 211 | |
| 9/21/2007 | | | | | 3948 | 211 | |
| 9/22/2007 | | | | | 3719 | | |
| 9/23/2007 | | | | | 3482 | | |
| 9/24/2007 | | | | | 3563 | | |
| 9/25/2007 | | | | | 3543 | | |
| 9/26/2007 | 13000 | | | | 3781 | | |
| 9/27/2007 | | | | | 3722 | | |
| 9/28/2007 | | | 140 | | 3879 | | |
| 9/29/2007 | | | 150 | | 3785 | | |
| 9/30/2007 | | | | | 3547 | | |
| 10/1/2007 | | | | | 3356 | | |
| 10/2/2007 | | | | | 3036 | | |
| 10/3/2007 | | | | | 2753 | | |
| 10/4/2007 | | | | | 2594 | | |
| 10/5/2007 | | | | | 2143 | | |
| 10/6/2007 | | | | | 1821 | | |
| 10/7/2007 | | | | | 1934 | | |
| 10/8/2007 | | | | | 1941 | | |
| 10/9/2007 | | | | | 1753 | | |
| 10/10/2007 | | | | | 1577 | | |
| 10/11/2007 | | | | | 1355 | | |
| 10/12/2007 | | | | | 1203 | | |
| 10/13/2007 | | | | | 1054 | | |
| 10/23/2007 | | | 110 | | | | |
| 10/25/2007 | | | 320 | | | | |
| Total Violations | 30 | 15 | 7 | 8 | 113 | 36 | 0 |

Notes: Site ID refers to sites identified in the "Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan," dated April 7, 2004.

* Regional Board staff calculated the rolling 30-day geometric mean values presented.

[Faint, illegible text]

EXHIBIT B



California Regional Water Quality Control Board

Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Linda S. Adams
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

March 4, 2008

Mr. Glen Kau
Director of Public Works
City of Inglewood
P.O. Box 6500
Inglewood, CA 90301-1750

VIA CERTIFIED MAIL

**ORDER PURSUANT TO CALIFORNIA WATER CODE SECTION 13383
(REGARDING VIOLATIONS OF ORDER NO. 01-182 AS AMENDED BY ORDER NO.
R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, WDID
4B190179001)**

Dear Mr. Kau:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination System (NPDES) as authorized by the federal Clean Water Act. On December 13, 2001, this Regional Board adopted the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (LA MS4 Permit), under which the City of Inglewood is a Permittee.

BACKGROUND

The LA MS4 Permit was subsequently amended on September 14, 2006 by Order No. R4-2006-0074 and on August 9, 2007 by Order No. R4-2007-0042 to implement the summer dry weather waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. The summer dry weather requirements were incorporated in the LA MS4 Permit as specific Receiving Water Limitations (RWLs) for fecal indicator bacteria in Parts 2.5 and 2.6, and a supporting specific prohibition on discharges from the municipal separate storm sewer system (MS4) that cause or contribute to exceedances of the bacteria RWLs.

The Permittees collectively discharge urban runoff and storm water from the MS4 to the Santa Monica Bay, a navigable water of the United States, under the provisions and requirements of the LA MS4 Permit. These discharges, as demonstrated via shoreline water quality monitoring, contain total coliform, fecal coliform, enterococcus and other pollutants, which degrade water quality and impact beneficial uses of the receiving waters at beaches along Santa Monica Bay.

California Environmental Protection Agency



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These bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

As documented in the enclosed Notice of Violation, technical staff of the Regional Board has concluded that Inglewood is in violation of waste discharge requirements established in Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385.

The data submitted in the Permittees' shoreline monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Part 2.5 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at one shoreline monitoring site located along Santa Monica Bay beaches to which the City of Inglewood discharges via the MS4, on 119 days, which included 209 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are detailed in the enclosed Notice of Violation. The City of Inglewood is jointly responsible for violations at this monitoring site along with the other Permittees with land area within the watershed draining to this site.

REQUIREMENT TO PROVIDE INFORMATION

California Water Code § 13383 provides the Regional Board the authority to require a Permittee to monitor and report and provide other information, under penalty of perjury, that the Regional Board requires. **Pursuant to CWC § 13383, the City of Inglewood is hereby ordered to submit the information required in this Order by April 21, 2008.** Furthermore, pursuant to CWC § 13385, failure to comply with any requirements established pursuant to CWC § 13383 may result in the imposition of administrative civil liability penalties by the Regional Board of up to \$10,000 for each day in which the violation occurs after the April 21, 2008 due date. (CWC § 13385(a)(3).)

Pursuant to CWC § 13383, the Regional Board directs the City of Inglewood to provide information evaluating and documenting (i) the causes of the violations, (ii) remedial actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA MS4 Permit and those taken since, and (iii) the City's plans for additional corrective and preventative actions to bring MS4 discharges into compliance with the bacteria RWLs applicable to the Santa Monica Bay for the upcoming summer dry weather period, beginning on April 1, 2008.

Specifically, the City of Inglewood is required to submit a report providing the following information for the shoreline monitoring site, for which it is jointly responsible, where violations have been documented. The report shall be signed by an authorized signatory for the City of Inglewood, under penalty of perjury. The report shall provide:

1. For site SMB BC-01, which is impacted by discharges from Ballona Creek watershed for which there is a separate bacteria TMDL to address bacteria impairments in Ballona



Creek and its tributaries, an evaluation and supporting documentation of whether the sources causing the violations are originating from upstream sources within the Ballona Creek watershed, or whether the causes of the violations are originating from sources in proximity to the shoreline monitoring location. If the causes of the violations at this site are originating from sources in proximity to the shoreline monitoring location, then the City of Inglewood shall provide the information required below.

2. The source(s) of the violations for the shoreline compliance location, including an evaluation of dry weather discharges from the MS4 at the noncompliant shoreline location on the date(s) of the violations. The evaluation shall include, where available:
 - a. Details regarding dry weather discharge from the MS4 to the noncompliant shoreline location including, but not limited to storm drain position, volume estimate, flow direction, presence of ponding, and proximity to surf.
 - b. Details regarding existing treatment of summer dry weather discharge from the MS4 at the noncompliant shoreline location, and any upstream treatment including, but not limited to type(s) of treatment system(s), operational capability(ies), and operational status on date(s) of violation.
 - c. Results of any source investigation(s) of the subwatershed, pursuant to protocols established under CWC § 13178, detailing the locational and/or biological origin of the bacteria causing or contributing to RWL violations.
3. A detailed description of remedial actions taken prior to incorporation of the TMDL summer dry weather requirements into the LA MS4 Permit (i.e., before September 14, 2006) and those remedial actions taken since, and the results thereof.
4. A detailed description of additional corrective and preventative actions that will be taken for summer dry weather discharges from the MS4 to preclude future violations. The report shall include a time schedule designed to achieve full compliance. This timeline shall not be construed as an authorization for any past or future RWL violations.

In addition, should the City of Inglewood contend that it is not responsible for one or more of the violations, Inglewood shall also submit the following information, if applicable:

1. Evidence that the RWL violation(s) at the shoreline monitoring site is not the result of discharge from the MS4 but from some other sources or discharges;
2. Evidence that Inglewood does not discharge dry weather flow into the Santa Monica Bay at the shoreline monitoring site; and
3. Evidence that Inglewood's summer dry weather discharges into the Santa Monica Bay are treated to a level that does not exceed either the single sample or geometric mean bacteria RWLs.



CIVIL LIABILITY

Pursuant to CWC § 13385(a)(3), the City of Inglewood is subject to penalties of up to \$10,000 for any violation of the requirements set forth in this Order. These civil liabilities may be assessed by the Regional Board beginning with the date on which a violation of this Order first occurred, and without further warning. The Regional Board may also request that the State Attorney General seek judicially imposed civil liabilities of up to \$25,000 for each day in which a violation occurs, or injunctive relief, pursuant to CWC §§ 13385 and 13386. The City of Inglewood may also be subject to penalties pursuant to other sections, and other forms of enforcement proceedings, in addition to those described above, if compliance does not timely occur.

RIGHT TO PETITION

Pursuant to CWC § 13320, an aggrieved person may seek review of this Order by filing a petition within 30 days of the date of this Order with the State Water Resources Control Board (SWRCB). The petition must be sent to the SWRCB, P.O. Box 100, Sacramento, CA 95812.

If you have any questions regarding this matter, please contact me at (213) 576-6605, or alternatively, your staff may contact Mr. Carlos Urrunaga at (213) 620-2083.

Sincerely,



Tracy J. Egoscue
Executive Officer

Enclosure: Notice of Violation, dated March 4, 2008

cc: Ms. Erika Bustamonte, Administrative Assistant, Inglewood
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugene Bromley, U.S. EPA, Region 9

California Environmental Protection Agency



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